

ROSANDER MINING CO.

IBLA 84-303

Decided November 30, 1984

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, rejecting mining claim recordation filings for placer mining claims AA 32317 through AA 32332.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Recordation -- Patents of Public Lands: Effect

Issuance of a patent without mineral reservation divests the Department of jurisdiction and authority to inquire into disputed questions of fact relating to the patented land or to make any determination of rights to that land. Where it has not retained jurisdiction over land encompassed by a mining claim, BLM may properly reject a claimant's recordation filing for that claim.

2. Federal Land Policy and Management Act of 1976: Correction of Conveyance Documents -- Patents of Public Lands: Amendments

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), the Secretary has authority to correct error in a conveyance document disposing of public land. Where the party seeking reformation is not the holder of the patent, the provision may not be applied without consent and surrender of the patent document by the patentee.

3. Patents of Public Lands: Suits to Cancel

Absent fraud, a suit by the United States to annul or vacate a patent of public land is barred by 43 U.S.C. § 1166 (1982) where more than 6 years have elapsed since issuance of the patent.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (1982), overruled to the extent inconsistent.

APPEARANCES: R. Eldridge Hicks, Esq., Anchorage, Alaska, for Rosander Mining Company; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Alaska Region, for Bureau of Land Management; M. Francis Neville, Esq., Assistant Attorney General, for State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Rosander Mining Company appeals from a January 10, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), rejecting mineral claim recordation filings for gold placer mining claims AA 32317 through AA 32332. 1/

In 1950 and 1953, the Colorado Creek Mining Company acquired the subject claims, all located in T. 22 S., R. 15 E., Kateel River Meridian, Alaska, and held them until 1982. During that period of possession, Colorado Creek Mining Company annually recorded in the Mt. McKinley Recording District, with the exception of 1957 and 1958, affidavits of labor for these claims. On October 12, 1979, pursuant to the recording requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), a combined notice containing relevant information for the claims was filed with BLM. On October 5, 1982, Rosander Mining Company acquired title to these claims by quitclaim deed.

On February 1, 1972, the State of Alaska filed an application under the provisions of section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. ch. 2 note (1982), for 368,640 acres of public lands, including T. 22 S., R. 15 E., Kateel River Meridian. In the application, designated F 15302, the State alleged, "on the date of this application, no part of the lands was claimed or occupied under the mining laws." Under the direction of 43 CFR 2627.4(c), notice of the application and the lands selected was published weekly in the Fairbanks Daily News-Miner from September 4, through October 2, 1974. The notice instructed all persons adversely claiming the lands to file in the designated BLM office their objection to the selection. On January 19, 1976, BLM issued a tentative approval of 366,096 acres under State selection F 15302, including the township in question here. In its approval, BLM concluded: "The lands described are unreserved, are not known to be occupied under the public land laws, including the mining laws, and

1/ The 16 claims are:

<u>BLM Serial Number</u>	<u>Claim Name</u>	<u>Location Date</u>
AA-32317	Eldorado Association	1937
AA-32318	Titanic Claim	April 1, 1937
AA-32319	Wiley Post Claim	1937
AA-32320	Dikeman Association	1930
AA-32321	Oregon Association	1930
AA-32322	Moose Association	1937
AA-32323	Caribou Association	November 17, 1937
AA-32324	Moonshine Association	May 14, 1937
AA-32325	Black Bear Association	October 1, 1948
AA-32326	Eagle Association	1937
AA-32327	Mink Association	October 13, 1937
AA-32328	Royal Oak Association	May 14, 1940
AA-32329	Sunshine Association	May 12, 1940
AA-32330	Holligan Association	May 12, 1940
AA-32331	Wiesel Association	October 20, 1937
AA-32332	Beaver Association	1937

are not valuable for hot or medicinal springs, and otherwise conform to the requirements of the Statehood Act of 1958." Soon thereafter, a letter dated February 16, 1976, protesting "the selection of the area involving our claims" was mailed to the Alaska, Division of Lands, by the Colorado Creek Mining Company. It appears that a copy of this protest was mailed to BLM. A copy of the protest was forwarded by the State to BLM on February 20, 1976. The record does not disclose how BLM handled this information, but patent 50-76-0244 was issued to the State of Alaska on August 13, 1976. The patent included the lands at issue here and neither contained a mineral reservation nor any recognition of the outstanding mining claims.

Even after the patent was granted, Colorado Creek Mining Company and Rosander Mining Company continued to hold the claims and annually file the required proof of labor. Subsequently, BLM determined that the lands on which the claims are situated were patented to the State of Alaska in 1976. BLM held that since the patent had transferred legal title from the United States without mineral reservations, the Department had no jurisdiction over the conveyed lands. Accordingly, on January 10, 1984, it rejected these recordation filings.

In its statement of reasons, Rosander Mining Company alleges that BLM erred in its conclusion that it no longer had jurisdiction over the subject lands. Appellant argues that conveyance under section 6(b) of the Alaska Statehood Act, extends only to those Federal lands "which are vacant, unappropriated, and unreserved at the time of their selection." See 48 U.S.C. ch. 2 note (1982). It further claims that under this provision, selection by the State cannot affect any valid existing mineral claim, location, or entry under the laws of the United States or the right to full use and enjoyment of the occupied lands. Appellant argues that the patent did not convey what the law reserved and therefore BLM retained jurisdiction over the lands encompassed by these valid mining claims. It also asserts that under section 316 of FLPMA, 43 U.S.C. § 1746 (1982), BLM has jurisdiction to correct any error in the patent, citing Bumble Bee Seafoods, Inc., 65 IBLA 391 (1982). Additionally, appellant asserts a violation of due process in the patenting of the land despite notice to BLM and the State of the conflicting mining claims.

BLM, through its counsel, argues that the case presented by appellant is essentially identical to Harry J. Pike, 67 IBLA 100 (1982), where the Board affirmed BLM's rejection of recordation filing for lack of jurisdiction over the located lands. Appellant, in turn, argues that in the Pike decision the Board failed to consider the impact of section 316 of FLPMA on BLM's jurisdiction. It claims that the present appeal is distinguishable from the Pike case since notice of the existing claims was given before the patent was issued.

[1] It is well established that the issuance of a patent without a mineral reservation, even if it is issued by mistake or inadvertence, divests the Department of jurisdiction and authority to determine disputed questions of fact relating to the patented land or to make any determination of rights to that land. Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897);

Moore v. Robbins, 96 U.S. 530 (1877); Henry J. Hudspeth, Sr., 78 IBLA 235 (1984). Based on this principle, the Board held in Harry J. Pike, supra, that BLM is without authority to recognize mining claims located on lands patented without mineral reservation and, therefore, it may properly decline to accept claimant's notice of location and/or proof of labor for such lands filed for recordation with BLM since no purpose would be served by doing otherwise. See also Henry J. Hudspeth, Sr., supra at 237. 2/

[2] Appellant asserts that an exception to this rule was created by Congress when it enacted section 316 of FLPMA, 43 U.S.C. § 1746 (1982), to provide authority in the Department to review and correct erroneous patents. In Bumble Bee Seafoods, Inc., supra at 400, the Board held that the Secretary has discretionary authority under section 316 to correct an error in a conveyance where the error is clearly established and equity dictates that relief be granted. The Bumble Bee Seafoods decision was modified subsequently on reconsideration by an unpublished order dated March 11, 1983. The latter order addresses as follows the Secretary's authority under section 316:

Since Bumble Bee has a vested right-of-way, we must address the other ground asserted by the Regional Solicitor in this original petition for reconsideration. That is that "the Board incorrectly applied 43 U.S.C. § 1746 [FLPMA] in holding that the interim conveyance may be administratively 'corrected' to reflect a preexisting valid right-of-way."

* * * * *

The Regional Solicitor asserts that a patent may not be administratively corrected against the wishes of the patentee. He directs our attention to proposed Departmental regulations implementing section 316 of FLPMA, 43 U.S.C. § 1746 (1976). 3/ Those regulations state that the purpose of section 316 is to allow the Secretary principally to correct errors in legal descriptions in patents. The regulations provide that application may be made for such a correction. Proposed 43 CFR 1865.1-3(c), however, requires that the applicant surrender the original patent. Thus, the regulations do not contemplate applications being made by a stranger to the patent.

2/ The decision appealed from is titled "Mining Claim Recordation Filings Rejected, Mining Claims Declared Null and Void." However, the text of the decision does not address the validity of the claims, but merely determines that, due to lack of Departmental jurisdiction, the recordation filings are rejected. The same lack of jurisdiction over the patented land which precludes acceptance of the recordation filings precludes any finding as to the validity of the claims.

3/ The final version of these regulations became effective Oct. 9, 1984. 49 FR 35296 (Sept. 6, 1984). The regulations limit patent corrections to errors of fact and not of law. 43 CFR 1865.0-5(b), 49 FR 35299 (Sept. 6, 1984); see Walter and Margaret Bales Mineral Trust, 84 IBLA 29 (1984).

The proposed regulations, 43 CFR 1865.3, do provide that the authorized officer may on his or her own motion correct a conveyancing document where all existing or prospective owners agree to the correction. The Regional Solicitor represents that the patentee, Alaska Peninsula Corporation, "very much opposes the 'correction.'" The Regional Solicitor argues that if Bumble Bee did have a vested right, it would take a court action to establish that right.

The Regional Solicitor's argument concerning our interpretation of 43 U.S.C. § 1746 (1976) is well taken. To the extent that our Bumble Bee decision directed that Interim Conveyance 263 be administratively corrected, it is vacated.
[Footnotes omitted.]

We reaffirm this holding and, accordingly, the opinion cited as Bumble Bee Seafoods, Inc., supra, is overruled to the extent it is inconsistent.

The Board has acknowledged this authority to correct patents where the applicant for correction was the holder of the patent and the purpose of the action was to correct a defective land description. See George Val Snow (On Judicial Remand), 79 IBLA 261 (1984); Ben R. Williams, 57 IBLA 8, 12 (1981); Mantle Ranch Corp., 47 IBLA 17, 87 I.D. 143 (1980). We reaffirm the Board's position regarding applicability of section 316 as it is found in Mantle Ranch Corp., supra. Reformation of a patent under the provision will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant for relief will thereby be preserved. Id. Since the State of Alaska is a necessary party to appellant's application for relief as its rights in the lands would be affected by the proposed correction, the Department cannot proceed under section 316 without its consent, which has not been forthcoming. ^{4/}

[3] Where a patent has been issued through mistake or error of law by the Department, remedy may be sought through a suit brought by the United States in Federal court to annul or vacate the patent. 43 U.S.C. § 1166 (1982); United States v. Oregon Lumber Co., 260 U.S. 290 (1922); United States v. Iron-Silver Co., 128 U.S. 673 (1888). However, suit by the United States would be barred by the statute of limitations since more than 6 years have elapsed since issuance of the patent. 43 U.S.C. § 1166 (1982); see Burke v. Southern Pacific Railroad, 234 U.S. 669 (1914); United States v. Eaton Shale Co., 443 F. Supp. 1256 (D. Colo. 1977); Harry J. Pike, supra. This statute of limitations, however, may not preclude appellant from seeking judicial recognition of its rights pursuant to the mining claims predating the State selection. See Capron v. Van Horn, 258 P. 77 (Cal.), cert. denied, 284 U.S. 679 (1931).

^{4/} Consent of the patentee is required in part because surrender of the patent is necessary. Although the State of Alaska has made an appearance through counsel in this appeal, there has been no expressed consent to reformation of the patent. While silence may under some circumstances be taken as an implied consent, in this case, where the authority of the Department to take any action at all depends upon consent, it must be clearly stated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge

